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11 JUN 2008

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BUFFALO, NY 14202

In re Application of :
BRON et al :
Application No.: 10/588,398 : COMMUNICATION
Filing Date: August 3, 2006 :
Attorney Docket No.: 0-06-172 :

This is in response to the correspondence filed March 24, 2008. The correspondence states that applicant has received no confirmation from the Office about applicant's petition to amend the priority claim. Applicant is advised that a decision on applicant's petition was mailed May 18, 2007. A copy of the decision is attached to this communication.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Any questions concerning this matter may be directed to Bryan Lin at (571) 272-3303.

Bryan Lin

Bryan Lin
Legal Examiner
Office of PCT Legal Administration

ATTACHMENT: copy of decision mailed May 18, 2007



UNITED STATES PATENT AND TRADEMARK OFFICE

18 MAY 2007

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BUFFALO, NY 14202

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Application No.: 10/588,398
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DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed April 27, 2007, to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the purported amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a late claim for priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in 37 CFR 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above. Specifically, the purported amendment to the specification does not begin on a separate sheet as required by 37 CFR 1.121(h).

Before the petition under 37 CFR 1.78(a)(3) can be granted, a renewed petition and either an Application Data Sheet (37 CFR 1.76(a)(5)) or a proper amendment (complying with the provisions of 37 CFR 1.121) to correct the above matter is required.

With regard to item (3) above, the petition states that applicant "did not submit any amendment to the specification to claim priority under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending non-provisional application or international application designating the United States of America within the time period set forth in 37 CFR 1.78(a)(2). The failure to do so was unintentional because it was believed that application was properly filed under the PCT protocols." This statement is interpreted as a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.


Further correspondence with respect to this matter should be addressed as follows:


By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

Any questions concerning this matter may be directed to Bryan Lin at (571) 272-3303.


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